

1901-041 Chancery Causes: Pennington Bros] vs. H. G. Wood
Lee Co.

Pennington, Gibson, Hyatt, Duncan

CA-Debt
T-Property

-Deed
-Correspondence

To the Hon. Ha. W. Skeen, Judge of the Circuit Court for Lee County:

Humbly complaining your orators, E. W. Pennington and R. L. Pennington, partners in the profession of law, under the style and firm name of Pennington Brothers, would respectfully represent and show unto your honor that H. G. Wood, a non resident of the State of Virginia is justly indebted to them in the sum of \$100.00, for services rendered him in the prosecution of a certain Chancery suit lately pending in your honor's court, stled "H. G. Wood vs William Collier"; that said sevices were rendered under special contract with the said H. G. Wood, in this way to wit; William Collier had executed to said Wood a note of about \$1185.00 for ^{Part of} the purchase price of a tract of land sold by Wood to Collier while said Wood was a resident of this County; afterwards Wood removed to Oklahoma, leaving this note and others, as your orators are advised, in the hands of his brother-in-law, Mr. J. R. Gibson of Jonesville, Va. While said note was in the hands of said Gibson there was some money paid as credits on said note, but only enough to about pay the accrued interest. After the note had been due for some time and Collier had failed to pay, one of your orators, Robert L. Pennington, received a letter from T. J. Gibson, a son of Mr. J. R. Gibson, and nephew of said Wood, who was a young lawyer and located then at Bristol, Tenn, and who represented that he had a contract to ~~an~~ collect this note for 5 %, and proposing that if said R. L. Pennington would take the note and divide the fees according to the rules of attorneys then he would have his father, who still had the note, to turn the note over to him. He represented in said letter that about all to be done was to bring suit and sell the property, as there would be no defense unless it was in regard to the title to the property and that on account of some woman who might have had dower but who was dead. Under this phase of the case, while the fees were small, they were sure, and the said R. L. Pennington agreed to bring said suit under said circumstances, and under the name of the said firm, Pennington Bros., did bring said suit, but when said Collier came to answer said bill he did not put in the defense which was represented to your orators would be put in

but claimed that the note sued upon was wrong, and that at the time that he executed it he was only owing about \$270.00, and by endorsement upon the back of the note there was shown to have been paid \$385.00 and that he ought to have an other credit of \$65.00 for cull lumber, thus showing that there was not only nothing due but that Wood was due Collier about the sum of \$200.00; when his answer came in, and General Pridemore, ^{Collier's Counsel,} was so confident that he was going to succeed with Mr. Collier's contention, your orators called upon Mr. J. R. Gibson and he said that we would have to confer with Mr. Wood. Your orators then wrote Mr. Wood the facts concerning the answer, sending him a copy thereof as well as a copy of the ^{Bill} answer. In said letter we explained to him the fact that we had agreed to collect the claim for 5 % dividing with his ~~NEPHEW~~ nephew, but told him that as Collier had answered as he had we could not afford to litigate such a question as was presented for the uncertain fee of \$ 5%, but that we were willing to undertake the fight if he were willing to pay us \$100.00 if we should succeed and \$50 if we should fail, ^{he settling with Mr. J. R. Gibson} to which letter he replied accepting our proposition and giving us directions as to the facts of the case. We proceeded in good faith and laboriously prepared and won said case and got judgement for the amount ^{that} ~~was~~ was owing him, and defeated that theory of the defense that there was a mistake in the note. Your orators procured a decree for the sale of the said property and the same was sold and purchased by H. G. Wood at the price of \$1304.92 a sum sufficient to pay all the debt costs, and interest and commissions of sale. Said Wood then refused to pay your orators any thing, and has not paid them any thing for their services in this matter.

Your orator will further represent and show unto your honor that said H. G. Wood is the owner of the said lands that he purchased at said sale, as will appear by a copy of the deed here filed as part of this bill and prayed to be considered as part thereof; that said ~~Wood~~ is a non-resident of the State of Virginia, but has estates and debts owing to him within the said county of Lee.

The prayer therefore of your orators is that the said H'G.Wood be made a party defendant to this bill of complaint and that he be required to answer the same but not under oath that being specially waived; that as said defendant is not a resident of this State an order of publication be duly made posted and publised as is provided against non-resident defendants by the laws of the State of Virginia; that the estate of the said Wood be attached so as to secure the payment of the said debt as aforesaid, and that upon a hearing a judgement be rendered in your orators' favor for said sum of money with an order to sell enough of said real estate as shall be necessary to pay said debt as aforesaid and the costs of this suit; and may all other furthur general and special relief be granted your orators that the nature of their cause and good conscience may sanction, and they will ever pray &c.

Pennington Bros.

Pennington Bros

v.s. ³/₃ Bice & Company
H.C. Wood

1st Feb'y rules bill filed & pa
accepted & D.M.

To the Hon. H. A. W. Skeen, Judge of the Circuit Court for Lee County, Virginia:

The

The Demurer and Answer of H. G. Wood, to a bill of complaint exhibited against him in the Circuit Court for Lee County, Virginia, by ^{E.W.} Pennington and R. L. Pennington, partners in the profession of law, under the style and firm name of Pennington Brothers, complainants.

The respondent says that the Plaintiff's bill is not good and sufficient in law, and as to this he prays ~~judgment~~ judgment of this Hon. Court.

The respondent, relying and insisting upon ~~said~~ said demurrer, and not waiving the same, should any further answer be required of him, answering, he says:

That the respondent does not owe the complainants the sum of \$100.00, or any part thereof, for services rendered him in the prosecution of the case of H. G. Wood ~~xx~~ v. William Collier under the supposed special contract mentioned and described in the complainants bill.

Respondent says that it is true that William Collier had executed to him a note of about the sum of ~~x\$125.00~~ \$1185.00 for part of the purchase price of a tract of land sold by him to Collier while he was a resident of this county, afterwards he removed to Oklahoma, leaving this note and others in the hands of his brother-in-law, Mr. J. R. Gibson, of Jonesville, Va.; that while said note was in the hands of said Gibson there was some money paid as credits on said note, but only enough to about pay the accrued interest; that after the note had been due sometime and Collier had failed to pay, one of the ~~com~~ complainants, Robert L. Pennington, received a letter from T. H. Gibson, a son of Mr. J. R. Gibson, and nephew of respondent, who was a young lawyer and located then at Bristol, Tenn.,

and who represented that he had a contract to collect this note for 5%, and proposing that if said R.L. Pennington would take the note and divide the fees according to the rules of attorneys then he would have his father, who still had the note, to turn the note over to him.

Respondent says that said Gibson did not represent in said letter "that about all to be done was to bring suit and sell the property, as there would be no defense, unless it was in regard to the title to the property and that on account of some woman who might have had dower but who was dead"; but instead of making any such statement or representation, respondent says that said Gibson stated in said letter the following language, to-wit:

"The case will give but little trouble and my fee was to have been 5% for the collection. Now if you will bring the suit it will be an accommodation, as I will be unable to get home before July. Father has the bond at store and will give you the same. William Collier gave his bond to H.G. Wood for (\$1185.00) balance on land. Vendors lien is retained. It has been six years ago and Collier, in order to defeat the claim, says that the title to the land is not good; because some widow failed to sign deed a long time ago. The widow is dead I understand and Collier will have to pay for the land or have it sold, if he can put up no better answer".

Respondent says that said Gibson made no representation as to what defense would or would not be put in by the said William Collier in the case of Wood v. Collier; that he did nothing further than state the only defence that had ever been made by Collier prior to the time the letter mentioned above was written, and ^{ed}express an opinion ^{that} ~~that~~ ^{as then made} the case "would give but little trouble"; that said Gibson, ~~represent that~~

instead of representing that nothing more would have to be done than to file or bring suit and sell the land, merely expressed the opinion that "Collier would have to pay for the land or have it sold, if he could put up no better answer than ~~the~~ claimed to have prior to the time the letter was written.

Respondent says that while the defence set up by said Collier was unexpected, he is advised and believes that ~~that~~ no more work arose from said answer than could reasonably be expected under the contract that existed between the complainants and himself; that when the complainants called on Mr. J. R. Gibson they never mentioned the new \$100 fee they had in contemplation, but ~~asked~~ asked him about the new facts set up in defence to the note against Collier, whereupon said J. R. Gibson advised them to confer with respondent in regard to the facts of said defence, and that said J. R. Gibson had no connection with the collection of the Collier note ~~whatever~~ after ~~the transaction~~ he contracted for respondent with T. H. Gibson and turned the note over to complainants under the direction of said T. H. Gibson, leading counsel in the case against said Collier.

Respondent says that he did receive letter from the complainants stating the facts set up in the answer of said Collier, as well as a copy of said answer and the bill filed in the case; that in said letter complainants stated that the matter had assumed such an attitude, which they had not looked for it would be necessary for them to have a different agreement ^{with} respondent as to their fee; that T. H. Gibson had turned the claim over to their Mr. R. L. Pennington, with whom Mr. Gibson was upon special terms of friendship; that they understood that the amount of the claim was not ~~taxed~~ disputed, and all they would have to do would be to bring suit and sell the land,

under which phase of the case the commission which they would have received would have been an ordinary fee; that the case had assumed such an attitude as would necessitate their taking depositions and making a long and hard fight in order to set up and establish the truth of respondent's claim, necessitating much hard labor and expense; that respondent could not therefore expect them to depend on an uncertain small commission for the work which they would have to do and the expense to which they would have to go, for it would be necessary for them to have the deposition of both respondent and wife, care-

fully taken, and to do so one of them would have to make a trip to respondent's place; that respondent knew that would be costly, as well as a hard trip; that it was always their purpose to drive every case they undertook to prosecute to success, as well to keep their reputation as to please their client, and to do that they of course must have pay for their services and expenses; that, after stating that they were willing to make their fee very reasonable, they were willing to do all they could for respondent, charging him a fee of \$100.00 if they gain, to be paid out of the amount collected from Collier, or in case they lost, charge respondent \$50.00, in either case respondent to pay their expenses on the trip to Oklahoma for the taking of the depositions; respondent paying Mr. Gibson whatever he may claim for his services.

Respondent says that when the letter above mentioned was written on December 1st, 1899, his leading counsel in the Collier case was living in Jonesville, Va., the same town in which Mr. R.L. Pennington, who wrote the letter, lived; that said Pennington passed by the home of said leading counsel in going to and from his office, as well as met him frequently on the streets, but never as much as conferred with him in regard to the "NEW PHASE OF THE CASE" or the new fee he had in contemplation; never mentioned to him the letter he intended to write and did write to respondent on December 1st, 1899.

Respondent says that upon the statement that said R.L. Pennington was upon special terms of friendship with defendants' leading counsel; that their understanding was that the amount of the claim was not disputed, and all they would have to do would be to bring suit and sell the land; that they would have "much hard labor and considerable expense"; that they would, one of them, have to make a trip to respondent's place, which would be hard and costly, he implicitly relied, not thinking for one minute that the letter contained false and fraudulent misrepresentations.

Respondent says that he is a plain man, unlearned in the law or legal ethics; and not knowing what to do or what was right in the case, not knowing that his leading counsel had not been consulted in the matter, reposed confidence in the complainants, which confidence was betrayed by the exertion of that influence which they had acquired, and under the exertion of that influence he wrote them a letter, the contents of which is not remembered, but the substance of which accepted their proposition; but that said letter never would have been written had respondent known the true facts & understood his actual rights.

Respondent says that he never thought of denying the validity of the said supposed special contract above mentioned until he received a letter from his leading counsel in the case telling him how he had been treated and advising him that the supposed contract was absolutely void; that the fee attempted to be contracted with him was founded on fraudulent misrepresentations, as he thought, and that it was not right that he should pay it; that when the bill for the costs and the supposed fee of \$100 was made out and sent in to him by Mr. R.L. Pennington, he sent the same to his leading counsel, Mr. T.H. Gibson, who took ~~the same~~ his check book and went to the office of said R.L. Pennington, and as agent for and in the name of respondent, called on said Pennington for the costs of the suit; that said Pennington upon giving said ~~that~~ amount of said costs, received a check for \$117.52; that said Gibson then asked for the amount due complainants in the case, whereupon said R.L. Pennington said "\$100.00"; that said Gibson then and there refused to pay any more than the he had contracted with said Pennington, but expressly offered to count it up and pay said Pennington that amount and no other.

Respondent says that he relied upon ~~the~~ said Gibson to look after his interests in the ~~the~~ case and advised him to do what he thought was just and right in ~~the case~~ regard to the fee asked by the complainants—upon the receipt of the letter received from him stating what he had done in the premises. Respondent says that it was not necessary for the complainants or either of them to make a trip to Oklahoma to take the depositions of respondent and wife; that they did not make such trip or either of them; that if complainants were put to any expenses at all in trying the case against Collier, they were inappreciable and nothing more than what would reasonably have been expected to have arisen under the original contract with respondent; that no more labor was necessary than could have reasonably been expected under the original contract, and that the impression ~~the~~ made by said Pennington's letter above referred to, that said T.H. Gibson had turned the claim over to complainants was untrue; but instead of such being the case said Gibson was called upon by complainants to assist in the taking of depositions, which he did, as he naturally expected and intended to do when he returned to Jonesville from Bristol, Tenn.

Respondent says that the allegation in the bill that respondent refused to pay complainants anything, and has not paid them anything for their services in said Collier case is wholly untrue and false; that he, through his leading counsel in said case, has paid them \$49.40, and at the same time offered to pay them the whole of their fee under the original contract with respondent, and has ever been ready and willing to do so from that day; that he has paid into the hands of A.B. Munsey, clerk of this court the sum of \$26.28 the balance due them under the original contract; that he does not owe them anything under the said supposed special contract or any other amount under any other contract or on any other claim.

Respondent says that the amount paid and to be paid by him to both T.H. Gibson and complainants under the original contract amounts to \$113.52, including commissions of sale, the legal attorneys fee and the amount allowed for making deed by the commissioner; that the amounts paid into court and to R.L. Pennington aggregate the sum of \$15.68 or ~~2/3~~ $\frac{2}{3}$ ds. of the sum total paid and to be paid by respondent in said case against Collier, as shown by exhibit filed herewith and which is prayed to be taken as part of this answer.

*That no motion was exercised there in any ordinary chancery suit, in support of which statement reference is here made to the papers in said cause.

Respondent says that the understanding he recieved from the letter mentioned above was that complainants were to receive under the supposed special contract, only \$100.00 and that respondent was to pay said Gibson whatever fee he might charge for his services under the original contract, whereas complainants after having recieved \$49.40, ask the court to give judgment against respondent for \$100.00.

Respondent says that the original offer made to complainants was accepted by them; that they were both legally and morally bound by said original contract, and that he is advised and believes that the said supposed special contract is absolutely null and void on account of undue influence, fraud and lack of valuable consideration.

And having fully answered complainants bill, respondent prays that said supposed special contract be set aside and declared null and void, and that he be hence dismissed with his reasonable costs by him in this behalf expended, And he will ever pray etc.

H. G. Wood

R. T. H. Gibson per d.

Total amount of fees paid and to be paid under the original contract.

5% of \$1182.40-----\$59.12

Com. of sale-----\$34.40

Legal fee-----\$15.00

Fee for making deed-----\$5.00

Total----- $\frac{5}{100} \frac{5}{100}$ -----\$113.52

Amount due and paid to Pennington Bros. & into court.
2/3rds. of \$113.52-----\$75.68

Amount reserved for T.H. Gibson

1/3rd. of \$113.52-----\$37.84

Total-----\$113.52.

H. G. Wood.

advs Answer

Pennington Bros.

Filed Feby 19th 1901

A. B. Munsey Clerk

T. H. Gibon
ATTORNEY AT LAW,
[REDACTED]

Pennington Bros

v.

H. G. Wood

Plff.

Def.

Inshy-

This cause came on again this day to be heard upon the papers formerly read therein and was argued by counsel. On consideration whereof, & it appearing to the court that the whole of the amount recovered herein on the 5th day of Mch 1901 has been paid, as well as all the costs of this suit, it is adjudged, ordered, & decreed that ~~this cause~~ ~~be~~ there be no advertisement or sale made under the decree heretofore entered herein & that this cause be stricken from the docket.

Pennington Bros
1/2 (Deane)

W. G. Wood

Entered on C. O. B. 6
P. 373.

Enter this

J. A. W. Shum

Mich. Jth 1901

Pennington Bros.,

Complainants,

vs: In Chancery,

H.G. Wood,

Defendant.

This cause came on this day to be heard upon the bill of the complainants and exhibits filed therewith, the answer of the defendant, and the attachment sued out in this cause, and the depositions of witnesses and the argument of counsel: Upon consideration of all which the court is of opinion that the complainants are entitled to and ought to recover of the defendant the amount sued for in this cause, that they have a right to maintain the attachment sued out herein, that their said debt by reason of said attachment shall be a lien upon the said land levied upon thereunder, and that no fraud or undue influence was used by the complainants in procuring their contract sued upon: It is therefore adjudged ordered and decreed that said complainants recover of H.G. Wood the sum of One Hundred Dollars with interest thereon from the 7th day of November. 1900, till paid and the costs of this suit; and if said sum of money, the interest thereon and the costs of the this suit is not paid by said H.G. Wood or some one for him within 30 days from this date, it is further adjudged ordered and decreed that W.J. Milehem, sheriff of Lee County, after having advertised the time, terms and place of sale ^{for 30 days} of the land levied on by him, by written or printed notices posted at three public places in this county, one of which shall be at the court house and the others in the neighborhood of said land, on some court day at the front door of the court house he will proceed to sell the said land so attached upon by him at public outcry, or enough thereof to satisfy this decree, for cash in hand. And he will report his action to the court and this cause is continued.

Pennington Mon

Dec. 1889

H. G. Hood.

Entered on Lib. O.B.
No 6 Page 489.

Enter this

Mar 5, 1901
H. G. Hood

The deposition of J.R.Gibson, taken before me, Geo.P.Cridlin, a notary public in and for the County of Lee, and State of Virginia, by agreement of parties, on the 26th day of February, 1901, at the office of R.L.Pennington in the town of Jonesville, Va., and which are intended to be read as evidence in behalf of the defendant in a certain suit in chancery now pending in the Circuit Court of Lee County in which Pennington Bros. are plaintiffs and H.G.Wood is defendant.

Present T.H.Gibson for defendant.

R.L.Pennington for plaintiffs.

J.R.Gibson a witness of lawful age first being duly sworn deposes and says:

Q.1.-- If you ever heard anything about a different fee being arranged in the case of Wood vs. Collier, from that you arranged with T.H.Gibson, for Mr.Wood, state when it was and what was said?

A.-- My recollection is that T.H.Gibson told me that a different fee had been charged; this was after the decision of the case.

Q.2.-- If Mr. R.L.Pennington ever made any statement to you in regard to the higher fee, state when and what the conversation was?

A.-- I think that after Mr. T.H.Gibson told me of there having been a higher fee charged, that Mr. R.L.Pennington came into my office soon afterwards and said that he and T.H.Gibson had had a talk about the fee and that T.H.Gibson had seemed to be angry and had refused to pay the fee. This is the substance of what he said. I think. I told him that I thought the fee was too high, but that it was nothing to me that the matter was between him and T.H.Gibson^{or Wood} and a matter for them to settle.

Cross Examination.

X.Q.1.-- What fee did you contract with T.H.Gibson to have?

Obj.-- Objected to because it does not bear on the examination in chief.

T.H.Gibson for deft.

A.-- My understanding was that it was to be about \$50.00. I estimated the note to be for \$100.00 and that \$50.00 was to be the fee.

X.Q.2.-- In your examination in chief you state that you do not

remember having had any conversation with me relative to a different arrangement for a fee than the one first contracted for. By way of refreshing your memory, I will ask you if you do not remember of my being in your office some time after Collier had filed his answer in the case, and in talking with you about the Wood case, said to you that on account of the answer setting up the defence which it did, which if Collier made good, would not under the original contract give us anything, and that we had written to Mr. Wood and told him that we would have to charge him a different fee ~~and~~ than we had theretofore agreed to and that Mr. Wood had agreed with us, and in reply to this you just remarked, that of course that didn't make any difference to you, or words to that effect?

A.-I do not remember such conversation, or anything to that effect. I do not remember of hearing anything about the new fee until T.H. Gibson told me as stated above.

And further this deponent saith not.

John R. Gibson

Virginia, Lee County, to-wit:

I, Geo. P. Cridlin, notary public in and for the County aforesaid in the State of Virginia, do certify that the foregoing deposition of J.R. Gibson was taken, sworn to and subscribed before me at the time, place and for the purpose in the caption mentioned.

Given under my hand this 26th day of Feb. 1906

Geo. P. Cridlin
Notary public.

A. G. Wood
ads. { cu. clay.

Pumington Bros.

Deposition of
J. R. Gibson

Received from Geo P. Cridlin
the Notary before whom
taken and filed Feby 26th
1901 A. B. Munsey Clerk

Notary Geo. P. Cridlin
fee for taking depo.
1 hour. \$.75.

The deposition of R.L.Pennington and others taken before me, G.P. Gridlin, a Notary public in and for the county of Lee and State aforesaid, ~~at the law office of R.L.Pennington~~ at the law office of R.L.Pennington in the town of Jonesville, on the 25th day of February, 1901, ~~by agreement between the parties, to be read as evidence on the behalf of the plaintiffs in a certain suit in chancery pending in the circuit court for the county of Lee wherein the Pennington Bros. are plaintiffs and H.G.Wood is defendant.~~

Present, R.L.Pennington for Pennington Bros,

T.H.Gibson for defendant.

R.L.Pennington, one of the members of said firm of Pennington Bros., being reintroduced and sworn, proceeded to make the following statement:

"At the time that I made my statement in this case in the depositions hertofore filed, the defendant had not filed his answer, and I therefore desire to make further statement after reading said answer. At the time this debt of Mr. Woods was turned over to me by Mr. J.R. Gibson, it was my understanding then Mr. Gibson was acting as the agent of Mr. Wood, and that both our firm and T.H. Gibson were the employees of him as agent for Mr. Wood and to him was responsible, and from the outset he acted so, and it was to him that I went from time to time for facts and information, and I think it was to him I gave the receipt for the note. After I came to draft the bill I found that the deed did not correspond with the note which I had, and I went to Mr. Gibson to know how it was. The deed recited several payments that were to become due at different times, and none of the payments corresponded with the ^{note} ~~deed~~, and in order to enforce it as a lien against the land it was necessary to allege the facts wherever they were that this note represented the purchase money; so I went to Mr. J.R. Gibson and he could not tell me how it was and said that I would have to write to Mr. Wood, which I did and from him got a very short ^{statement} ~~statement~~ of the facts. I was directed by Mr. Gibson whom I understood in this matter to be master of both our firm and T.H. Gibson, and I saw nothing wrong or improper

in writing to him or in Mr.J.R.Gibson directing us to do so. As stated before,When Collier's answer was in we again went to Mr.J.R. Gibson,read him the answer and asked what to do,and he again not knowing,we wrote to Mr.Wood,and afterwards told Mr.Gibson that we did make a special contract for a diferent fee,to which he raised no objection. AT the time the answer was filed in Nov.,1899,T.H. Gibson was not at the court and my best recollection he was then living at Bristol. He ^{states} ~~states~~ in his anser ^{was} filed for Mr.Wood and in his deposition that he was living in Jonesville at the time we wrote Mr.Wood about the fee. My best recollection is that he was not living in Jonesville,but was yet in Bristol,and I can state for a fact that if he had moved back to Jonesville I did not know of it. Beside all this it was my understanding that I was to try the case, and that he had nothing to do with that part of it,though after he moved back to Jonesville and time had come for us to take the depositions as a matter of courtesy I called upon him,and he was present. My recollection is that he moved back to Jonesville soon after the November court in 1899,but I think it was after the date of our letter to Mr.Wood,and I have no recollection of seeing him untill some time in December when we are arangeing to get ready to make the fight in the case and I showed him Mr.Woods letter about the case,which is filed with my statement in chief. I then talked with him about the case,not wishing to ignore him or to be in any way discourteous. ^Wether or not the contract which was made with Mr. Wood was obtained by false representation of facts or the law,is fully shown by the correspondence filed. I am of the opinion that I was the first person to tell Mr.Wood that T.H.Gibson had any thing to do with the case,and I do not believe he knew any thing about the arrangement which Mr.J.R.Gibson had made with his son T.H., untill I explained the facts in our letter which has been filed. It was our intention to tell Mr.Wood the facts,and in order that he might know the facts and not be decieved we sent him ⁴ ~~co~~ies of both bill and answer and explained to him the fact that we had agreed to take 5% and divide it with his nephew,and with these

facts before him we thought him fully competent to decide whether he would pay us what we asked for our services or refuse to do so. We received his assent and gave him our best service, and the work done was well worth all we contracted for, and there is a great deal of work in the case that does not show by the papers in the case. It was a case that took careful study and close investigation of the law. General Pridemore who represented Mr. Collier in this case after he ^{had} filed Collier's answer told me that he was confident that he was going to win the case, and I was not so confident that I was going to win for Wood, and but for the care which I took in the case coupled with the sickness of General Pridemore in making him unable to fully bring out all the facts for his client that possibly he might have brought out, had he been well, I have doubts yet as to the result of the case.

T.H. Gibson knew I was carrying on correspondence with Mr. Wood about the case before it was tried, and knew that I had made a contract with Wood for a different fee, and that Wood was to pay him for his services, he did not ask me to tell him the amount, and as it is my policy to keep my own business to myself I did not norate what I was charging. But if he had asked me I should have told him.

It is ^astated in the answer which is filed by Wood that "Mr. T.H. Gibson took his check book and went to the office of the said R.L. Pennington and as agent for and in the name of the respondent called on said Pennington for the costs of the suit; that said upon giving said amount of costs received a check for \$117.52; that said Gibson then asked for the amount due the complainants in the case, whereupon said R.L. Pennington said: '\$100.00'; that said Gibson then and there refused to ^{pay} any more than he had contracted with said Pennington, but expressly offered to count it up and pay said Pennington that amount and no other". It is a fact that T.H. Gibson did come to my office one morning seeming very much excited and asked me for the amount of the cost. I told him what the cost/were and added thereto \$100.00 as our fee. He then asked me for the costs alone, saying that he would pay the costs but he did not know what

about that \$100.00 fee, saying that he had no instructions to pay the \$100.00. He then wrote out a check for the amount of the costs and commissions of sale less \$5.00 of the taxed attorneys fee which he asked me if it was alright for him to retain, and which I told him he might. He then said words to this effect: "I will not let Mr. Wood pay the \$100.00 fee". From these words I understood that possibly Mr. Wood had directed the \$100.00 fee paid, and I asked him if it was him or Mr. Wood that was making the objection to the payment of the fee contracted for. In effect he said that he had no authority or direction to pay the \$100.00. The statement made as above quoted that T.H. Gibson offered to ^{me}count up and pay me an amount is not true. He did not offer to pay anything, and never did do so until after we had brought suit under our contract. It is also stated in the answer that H.G. Wood has paid to us as plaintiffs \$49.40. This statement is entirely false. H.G. Wood has not paid us one single cent. We have been paid of the legal attorneys fee taxed in the case \$10.00, but this came out of the pocket of the defendant or out of the purchase price of his land, and according to the ruling of this Court, as I understand it, this taxed attorneys fee belongs to the attorney representing the party recovering same and not to the party himself. R.L. Pennington as commissioner appointed in that case to sell the land, received the commission for the sale of the land as a compensation for his services as allowed by law to commissioners making sale of lands, and as I understand it formed no part of the fee, and a client has no right to deduct the amount of commissions received for the sale of land from the fee which he contracts to pay his attorney, without a special agreement to that effect which I think it would be very foolish for a lawyer to make, and in view of my understanding of the law, I have made the statement above that it is false that our firm has received \$49.40. ~~It is further stated in the said answer that it was the understanding of the defendant that under the said contract that only \$100.00 was to be paid to our firm and to Gibson~~

The further taking of these deposition is adjourned until
Feb. 26th at 9:30 A.M. at the same place.

Geo. P. Cridlin N.P.

Met pursuant to adjournment at 9:30 A.M. Feb. 26, 1901, at the
office of R.L. Pennington in the town of Jonesville, Virginia.

Geo. P. Cridlin N.P.

All the foregoing statement made in the deposition above are
objected to both severally and collectively because a mere argument,
based upon inferences that are without foundation; because some
are mere matters of opinion, some are irrelevant and some are hear-
say.

T. H. Gibson for deft,

Cross Examination.

X.Q.1.-- Was any representation ever made to you by T.H. Gibson
or J.R. Gibson, that J.R. Gibson was the master of both the plaintiffs
and T.H. Gibson in the collection of the claim of Wood against
Collier?

A.-- I judged from the fact that J.R. Gibson was the agent of H.G.
Wood and was the party who employed, according to my understanding
T.H. Gibson, and as I understand the law both myself and T.H. Gib-
son were responsible to J.R. Gibson and J.R. Gibson responsible to H.
G. Wood. There were no words that I remember of from J.R. Gibson,
saying that he was the master or employee of Mr. Wood, but I judged
from the fact that I knew and the part which he took in the manage-
ment of the case.

X.Q.2.-- If there were representations made to you that J.R. Gibson
was the agent of H.G. Wood and you judged from the part he took in
the matter, why do you state as a fact in the answer above that J.
R. Gibson was the agent of H.G. Wood?

A.-- The word agent is a technical term and it was not necessary
for him to say that he was the agent for me to know that he was,
when he had said to me at the time that the note was delivered to
me that he had had the note for some time and had been receiving
payments upon the note which he pointed out, as I now remember, to
me as having been endorsed on the back certain of the credits that

were there endorsed, and the note being in his hands I could judge him to be nothing else than the agent of H.G.Wood.

X.Q.3.-- In your statement in chief you make the statement that after the answer was in in the case of Wood vs. Collier, you went to J.R.Gibson and read him the answer and asked what to do, and he not knowing, you wrote to Mr.Wood; then you say you afterwards told Mr.Gibson that you did make a special contract for a different fee to which he raised no objection; when, where and who were present at the time of the last conversation?

A.-- I do not know the time when it was. It was in the office of the store of what was then J.O.Gibson & Co. I do not think that there was anyone in the office except Mr. Gibson and myself.

X.Q.4.-- You state as I understand, that by your best recollection T.H.Gibson was not living in Jonesville at the time you wrote the letter to Mr.Wood on Dec. 1st, 1899, and filed in this case; and state as a fact that if he had moved back to Jonesville you did not know it: Do you not remember of being present at the November term of the Circuit Court 1899, when T.H.Gibson was sworn in to practice before said Court, and do you not remember that at that time that plaintiffs called T.H.Gibson to one side and had conversation with him in regard to making a trip to Oklahoma for the purpose of taking the deposition?

A.-- I do not remember at what term of the Court T.H.Gibson was qualified to practice, but at whatever term it was, I was present, and remember the motion being made by, I believe, Gen. Pridemore. I do not recollect about it being at that time that T.H.Gibson spoke about the trip to Okla., but at at some time I remember of speaking to him about it and he said that he had to make a trip to somewhere west, perhaps, Ill. and he stated that he could go by Blackwell Okla., take the depositions and save some expense, but I don't think we agreed on the plan. We felt that this was a most important question in the case, proper taking and careful taking of the deposition of H.G.Wood and his wife. I do not remember for certain, but I believe, and it is my best impression now, that myself and partner talked of the expediency of allowing Mr. Gibson to take

these depositions. I was of the opinion, and so I think was my partner, that it would not be safe to trust this most important part of the case to his hands, because, while he had taken a good course of study at one of the best law schools, he was inexperienced in the management of the taking of depositions and the practice of the Court generally, and we felt that upon us rested the responsibility of the case, as it was put to our hands and made our duty

to try it. *I file here copies of order showing the qualifications of J. H. Hibbs to practice in the Rec. Ct. - Ct., marked "A"*
And further this deponent saith not.

R. L. Pennington

Virginia, Lee County, to-wit:

I, Geo. P. Cridlin, a notary public in and for the County aforesaid in the State of Virginia, do certify that the foregoing deposition of R. L. Pennington was taken sworn to and subscribed, before me at the time, place and for the purpose in the caption mentioned.

Given under my hand this the 26th day of February, 1901.

Geo. P. Cridlin
Notary public.

Pennington Bros.
vs. { Du Chy.

H. B. Wood

Deposition of
R. L. Pennington

Received from Geo. P. Criddle
the Notary before whom
taken and filed Feb
26th 1901.

A. B. Munsey Clerk

Notary Geo. P. Criddle
fee for taking deposition
2 hours \$1.50

18th day of Feb. 1901,

The deposition of T.H.Gibson, taken before me, Geo.P.Cridlin,
a notary ^{public} in and for the County of Lee in the State of Virginia,
pursuant to agreement, at the law office of R.L.Pennington, in the
town of Jonesville, Va. to be read as evidence in behalf of the defend-
ant in a certain suit in chancery pending in the Circuit Court of Lee
County in which Pennington Bros. are plaintiffs and H.G.Wood is de-
fendant.

Present R.L.Pennington for plaintiffs and T.H.Gibson for defend-
ant.

T.H.Gibson a witness of lawful age being duly sworn deposes
as follows:

On Feb. 9th, 1899 I wrote the letter filed with Mr.R.L.Penning-
ton's deposition in this case marked "A". On or about Feb. 11th
1899, I received the letter marked "B" signed by R.L.Pennington
and filed with his deposition in this case. Along with the letter
I wrote on Feb.9th,1899, I ~~wrote~~ a letter to my father, J.R.Gibson,
in which I enclosed the letter to R.L.Pennington. In the letter to
my father I directed him to turn over the \$1185.00 note to Mr. R.L.
Pennington in case he accepted a proposition made to him in the
letter enclosed. After I received the letter marked "B" from Mr.
Pennington I heard no more of the case of Wood vs. Collier, that
I remember, until on or about the 10th day of November, 1899, when
I was sworn in to practice law before the Circuit Court of Lee County
Virginia. On that occasion Mess. Pennington Bros. called me to one
side of the bar a made the following statement or something to the
that effect. "Tom one of us will have to go out yonder to take ~~the~~
depositions of Harve Wood and his wife in that case". In reply
I stated, as best I remember the following language, "well, if it be-
comes necessary, as I expect to go to Ill. in a week or two I can go
on from there to Oklahoma ~~from there~~, and save expese to Wood, by
letting him just pay my expenses on from Ill. Mr. R.L.Pennington
told me along about the 9th or 10th of December 1899, that he was
going to take depositions in the Collier case in a few days, and
that he wanted me to come up at that time. I did so. Nothing was
~~mentioned~~

mentioned to me about the trip to Oklahoma at any time after the conversation took place in the Court room on the day I was sworn in as above stated. The next I had to do with the case was to write back from Colorado for Mr.R.L.Pennington to bid the land in for Mr. Wood for the debt and cost if no one would give more. This was done in compliance with the letter I received from Mr.Wood. Mr.Wood told me in that letter to bid the land in as above stated, and being away at the time the land was sold, I directed Mr.R.L.Pennington do so for me as I could not be present at the sale. A few days after I came home from Col! I received from Mr.Wood a statement of the cost and a \$100.00 fee that had been sent to him by Mr.R.L.Pennington. In the letter Mr.Wood wrote, ^{along with this statement} he directed that I should pay the costs in the Collier case. As I had other collection to make for him amounting to several hundred dollars at that time, I took my check book and went to the office of Mr.R.L.Pennington to settle the matter up. I called on Mr.Pennington for the costs in the Collier case and paid him a check for \$117.52. Then I called on Mr. Pennington for a settlement of the attorney's fee, in reply he stated \$100.00. I refused to pay it but offered to pay him every cent that was due him under the original contract that I had with him for Mr. Wood when I associated him in the case with me. I lived in Jonesville, the same town in which Mr.R.L.Pennington lived at the time the letter written on December the 1st 1899, marked "D" and filed with plaintiffs deposition, was written. Mr. R.L.Pennington passed to and from his office by the place where I lived. I met him frequently on the street and in fact saw him nearly every day. He never as much as mentioned the new fee he had in contemplation, but ignored me in regard to the formation of the supposed special contract. On the day I went to pay off the cost in the Collier case to Mr.R.L. Pennington, or soon thereafter, I wrote to Mr.H.G.Wood, the manner in which the supposed special contract was made with him. As best I remember I told him that the contract was absolutely null and void as I thought; that ~~he~~ thought there had been misrepresentations made to him in the letter written on December, 1899, marked "D" and

filed with plaintiff's deposition. As best I remember I told Mr. Wood that it was not right, as I looked at it, for him to pay any such fee. The next I heard from Mr. Wood, he said that to do whatever I thought was just and right, and that he left the matter altogether in my hands. I considered that I had a perfectly fair and binding contract with the plaintiffs and that the amount they were to get out of the case, including their portion of the commissions of sale legal attorney's fee, fee for making deed, was a good if not large fee in the case. The 5% of the debt, the commissions of sale, and the legal attorney's fee and fee for making deed all amounted to \$113.52. According to my way of looking at it there was no more work done in the case of Wood vs. Collier than could have reasonable been expected under the original contract. I conceded to the plaintiffs two-thirds of the \$113.52. I have paid them, including their portion of the commission of sale, legal attorney's fee, fee for making deed, and amount already paid in to the Clerk of the Circuit Court of Lee County, the whole of the two-thirds of the \$113.52. I consider the supposed special contract was made and entered into by H.G. Wood without a full knowledge of all the facts in the case, and without a clear understanding.

Obj.-- All the statements made in the foregoing deposition and each one of the separately, are severally objected to as evidence, because some of them are mere matters of opinion, of law and fact, others are statements irrelevant and immaterial, others impertinent and scandalous.

Cross Examination.

X.Q.1.-- Was the refusal to pay the one hundred dollars ~~to~~ fee due to the fact that you advised Mr. Wood not to pay said fee, or was it because he had made refusal to pay?

A.-- As to that I cannot say. All I know about it is that I wrote Mr. Wood what I thought about the matter as stated above and received the reply as stated above. I wrote that letter for the purpose of protecting my client in the payment of what I considered an unjust fee and one that was not due by him.

X.Q.2.-- Did Mr. Wood ever refuse to pay the fee until you had advised him not to pay it?

A.-- Mr. Wood in reply to the letter I wrote him left the matter altogether in my hands and I refused to pay for him for the reasons stated above.

X.Q.3.-- Does Mr. Wood deny making the contract for the fee as claimed in the bill?

A.-- All I know about it is that Mr. Wood wrote me that he did not understand the ^{supposed special} contract to be anything else than that he was to pay plaintiffs \$100.00 out of the money collected from Collier. That is the substance of what he wrote, I don't remember his exact words.

X.Q.4.-- Suppose William Collier had made good the answer which he set up and there had been no contract ^{entered} into other than the one originally made, from what source would we have been paid our fees for our services?

Obj.-- Objected to because hypothetical and argumentative.

T.H.Gibson Atty for deft.

A.-- You would have been paid I suppose according to the terms of your original contract made with you when T.H.Gibson associated you with him in the case, otherwise I don't know.

X.Q.5.-- If we had recovered no judgment against Collier would we have been entitled to any fee out of H.G.Wood, as you construe that contract?

Obj.-- Objected to for the same reasons stated above.

T.H.Gibson Atty for deft.

A.-- ~~As I have~~ As I have never construed that contract, I cannot say, but I suppose you would have been in the same boat with me.

X.Q.6.-- State what boat ^{you} were in?

A.-- I was in the boat with the plaintiffs and we both would have gotten whatever fee the original contract called for unless Mr. Wood, with the advise and consent and a clear understanding of the case had have given something more.

X.Q.7.-- Is it not your best opinion that in the event spoken of above we and you would have been entitled to nothing for our pains

unless we got something out of William Collier?

A.-- It is my best opinion that Mr. Wood would have been reasonable in the matter. As to whether, under the original contract we would have been entitled to anything, I can only state my opinion, and will say, that as I look at it now I don't believe we would have been entitled to anything.

Obj.-- ~~Objectioned to the above~~ The above question and answer is objected to because hypothetical.

T.H. Gibson atty. for deft.

X.Q.8.-- I did not understand you in your statement in chief, whether you meant to state that I had never mentioned the fact of ~~the~~ having a special contract with H.G. Wood, or that I had never mentioned to you the amount thereof was \$100.00. Please state which you meant to state?

A.-- I meant to say that you had never mentioned the \$100.00 fee as it was contracted for.

X.Q.9.-- Then you do remember that I told you that after the answer was in, I had made a special contract with Mr. Wood?

A.-- I remember that in the Court room last Spring, some time, after the Commissioner's report had been made, I was making some calculations as to what our fee would amount to. I made some remark to Mr. R.L. Pennington about it, and he spoke of having arranged the matter with Mr. Wood. As to his exact words, I do not remember and cannot state. That was the first and only time he ever mentioned a new arrangement to me until the day we had the conversation in his office when I paid him the \$117.52.

And further this deponent saith not.

Thos. H. Gibson,

Virginia, Lee County, to-wit:

I, Geo. P. Cridlin, a notary public in and for the County of Lee in the State aforesaid, do certify, that the foregoing deposition of Thos. H. Gibson was taken, sworn to and subscribed before me at the time, place and for the purposes in the caption mentioned. Given under my hand this the 19th day of February, 1901.

Geo. P. Cridlin, N.P.

A. G. Wood
ads. { Deposition of
J. H. Gibson

Pennington Bros.

Received from Geo Prid-
lin the Notary before whom
taken and filed Feby 19th
1901.

A B Munsey Clerk

Geo. P. Cridlin N. P.
fee for taking deposition
2 hours - - - \$1.50

To H.G.Wood,

You are hereby notified that on the 18th day of Feby, 1901, between the hours of 8 A.M. and 8.P.M. of that day, at the office of R.L.Pennington in the town of Jonesville, Va., we will proceed to take the deposition of R.L.Pennington and others, which when taken is intended to be read in our behalf in a certain suit in chancery pending in the Circuit court for Lee County, wherein we are the plaintiffs and you are the defendants; and if from and reason the taking of said depositions should not be ~~completed~~ commenced, or if commenced not concluded on that day, the taking thereof will be adjourned from day to day from time to time and from place to place untill the same shall be at length completed.

Dated this the 11th day of Feby, 1901.

R. L. Pennington *R. L. Pennington*

Legal service of the foregoing notice is hereby accepted.

This Feby. 11, 1901.

J. H. Gibson *J. H. Gibson* Atty. for
H.G.Wood.

The depositions of R.L.Pennington, ^{and another} taken before me, Geo. P.Cridlin, a notary public in and for the County of Lee in the State of Virginia, at the law office of R.L.Pennington in the town of Jonesville, on this the 18th day of February, 1901, pursuant to notice hereto attached, to be read as evidence on behalf of the plaintiffs in a certain suit in chancery, wherein Pennington Bros. are plaintiffs and H.G.Wood is defendant.

Present R.L.Pennington for plaintiffs; and T.H.Gibson attorney for H.G.Wood.

R.L.Pennington a witness of lawful age being first duly sworn deposes and says:

~~####~~ I am a practicing lawyer of the Jonesville bar and have been since June 1893. I am a member of the law firm of Pennington Bros. which was formed in June 1893. About the 9th of February, 1899 I received a letter from Mr.T.H.Gibson through the hands of his father Mr.John R.Gibson which was dated at Bristol Tenn. Feb. 9th, 1899. In the said letter Mr.T.H.Gibson represented to me that he had in his hands for collection a note for H.G.Wood for \$1185.00, stating that his fee was to have been 5% for the collection. He asked if I would take this note for collection, dividing the fees according to the rules of attorneys. I do not now remember whether I answered this letter or not, but Mr. T.H.Gibson has just handed me a letter which was in reply to the letter spoken of above, and which I see states that I accepted the note for collection upon the terms stated in his letter. I called upon, and obtained of, Mr.John R.Gibson, the note spoken of in ~~xi~~ T.H.Gibson's letter, and as I now remember forthwith instituted a chancery suit looking to the collection of the note in question and the enforcement of the vendors lien retained in the deed for which the note had been executed. This suit was instituted by our law firm of Pennington Bros. It was stated in the said letter of Mr.T.H.Gibson that the defence that would be set up was in regard to the title to the land on account of some widow having failed to sign a deed a long time ago, and that the widow in question was now dead. Though the fees were small, under the circumstances such

commission would have paid a reasonable fee which would have been certain, and coupled with the commissions that could have been obtained for the sale of the property in question, would have made the attorneys bringing the suit a very fair fee for the work to be done. after the suit had been brought and duly matured William Collier filed his answer setting up a defence which claimed that he had not only paid all that was owing to H.G.Wood on account of his purchase from him but also had over paid said Wood a sum in the neighborhood of \$250.00. We were very much surprised at the answer put in by Mr. Collier. (We called upon Mr. J.R.Gibson, who had, as we understood, acting for a long time, as the agent of H.G.Wood, and who is a brother in-law of H.G.Wood, and as we remember asked Mr. Gibson what we should do, telling him, ^{of} and perhaps reading to him, the answer of Mr. Collier. He told us that we would have to write to Mr. Wood, that he was not acquainted with the facts, and we did so.) We wrote to Mr. Wood explaining to him in letter dated Dec. 1st, 1899, the answer that had been filed by Mr. Collier, and sending him also a copy of the bill and the answer, telling him that we had agreed with his nephew upon a fee of 5% to be divided according to the rules of attorneys, saying to him that we had brought the suit with the expectation of only having to bring suit and sell the land, under which phase of the case, the commission would have been an ordinary fee, and saying to him that on account of the case having taken the phase that it had, and the extra work to be entailed on us we could not afford to prosecute the case for that amount. We said to him in the same letter that we were willing to do all we could for him, charging him a fee of \$100.00 if we should gain and \$50.00 if we should lose, he paying the expenses, and Mr. Gibson whatever he may claim for his services. In a letter dated Dec. 9th, 1899, from Mr. Wood, he said, "I will accept your proposition in regard to your fee", then went on in a lengthy letter to explain the case, as he understood it. We understood this letter as an ^{acceptance} ~~acknowledgment~~ of our proposition, and in order to be sure of that fact, and if we were mistaken in the construction of his language, to give him a chance to refute our construction, under letter of

date of Dec. 23rd, 1899, we addressed Mr.Wood in this language:

" Mr.H.G.Wood, Blackwell, Oklahoma, Dear Sir: we are in receipt of your letter of recent date accepting our proposition in regard to the fee to be charged in the case against William Collier &c."

After this arrangement we went ahead to do all in our power we could do to bring success to Mr.Wood in his litigation and did bring his case to successful issue, procured a sale of the property on which he had a lien, sold same, which was purchased by Mr.Wood and is the same property attached on in this case. After he had purchased the property and had the same deeded to him, we wrote to him asking for our fee, and the only answer we received was to the effect that there must have been some mistake and called upon us to call upon Mr.J.R. Gibson. We then instituted this suit some time after receiving said letter. I have been practicing law for nearly eight years and in all this time I do not think I have ever charged a client a more reasonable fee than the fee which is charged to Mr.Wood in this case. For the amount of time taken up and the labor expended upon this case, a fee of \$200.00 would not have been unreasonable, according to the charges made by our firm and other lawyers practicing in this part of the State.

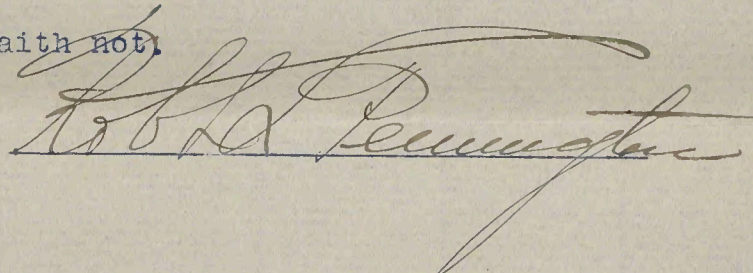
I here file as a part of my deposition the first letter spoken of above of February 9th, 1899, my reply thereto dated Feb. 10th, 1899, which has been handed to me by Mr.Gibson. I file also a carbon copy of the letter of Dec.1st,1899 addressed to Mr.H.G.Wood; the letter spoken of as above of Dec.23rd,1899 addressed to Mr.H.G.Wood, which are here marked "A", "B", "C" and "D". I also here file the said letter of Dec. 9th.1899, from Mr.H.G.Wood; and two other letters from him dated Feb.27th,1899, and Dec.21st,1899 respectively, marked respectively "E","F" and "G".

Obj.-- As to that part of the deposition refering to conversation with Mr.J.R.Gibson on page No.2 enclosed by parenthesis, in pencil mark, it is objected to because self-serving and hearsay and because further it is not shown that J.R.Gibson had any connection with the trans-

action or any authority to act after he turned over the note referred to above to Mr.R.L.Pennington according to the directions of the letter written by T.H.Gibson on Feb.9th,1899,above referred to.

T.H.Gibson, Atty. for deft.

And further this deponent saith not.



J/.R.Gibson another witness of lawful age being duly sworn deposes and says:

Q.1.-- Please state whether or not you were acting as the agent of Mr.H.G.Wood at the time that you turned over to me the \$1185.00 note on William Collier.

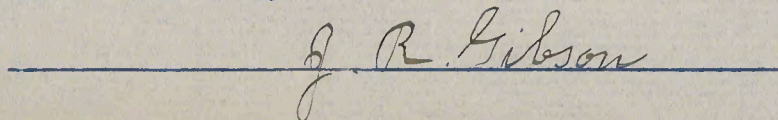
A.-- He left the notes in my possession for collection and I employed T.H.Gibson to collect them. Mr. R.L.Pennington called on me for the note and I gave it to him.

Cross examination.

X.Q.1.-- Did you have anything to do with the collection of the note after you turned the matter over to T.H.Gibson, and the note over to Mr.R.L.Pennington?

A.-- I did not.

And further this deponent said not.



R.L.Pennington re-introduced for the purpose of cross examination.

X.Q.1.-- In the letter I wrote to you did I ask you if you would take \$1185.00 note for collection, or did I tell you that I wanted to associate and let you try the case?

A.-- I do not remember the exact words of the letter. It is filed and will speak for itself.

I see that the letter states that you desired to associate and me try the case, by which I understood that I was to do the work and you to get one-third of the fee for having turned the note over thro' your father.

X.Q.2.-- Did you make the trip to Oklahoma for the purpose of taking the depositions of H.G.Wood and wife, as represented by you in letter marked "D" filed with your deposition?

A.-- I did ~~not~~, because in one of Mr.Wood's letters, I do not know whether it is in either one of the letters filed or not, but in some of his correspondence with us, he asked that we try to take his deposition upon interrogatories, as upon investigation it turned out that the trip for railroad fare, hotel bills and other expenses incident thereto would be something more than \$100.00 or about that sum and save to him the cost of the trip, so we undertook first to send Mr. Wood a set of interrogatories, which if he answered satisfactorily we had concluded not to take the trip, but if upon receiving his answers upon the interrogatories we thought we could risk the case upon his answer, without the presence of counsel, we would then spare him the cost of the trip. So we prepared and sent to Mr.Wood interrogatories for himself and wife to answer, which came back from him and his wife, fairly answered and thereupon we determined to take his and his wife's depositions and risk his case upon the interrogatories. The interrogatories there then prepared and sent and came back duly authenticated. So it was at the request of Mr. Wood that we did not make the trip. We were ready and willing to carry out our part of the contract.

X.Q.3.-- Was it necessary for you to go to Ok. to take the deposition of H.G.Wood and his wife?

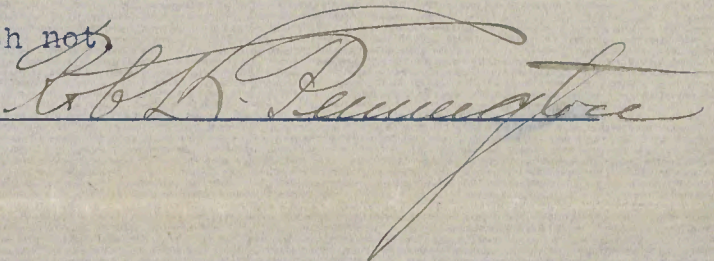
A.-- We thought it was necessary to have taken the trip ^{as} we wrote him as it is extremely dangerous in our view of the practice of the law to put a witness upon the stand without first having interrogated and examined the witness beforehand, and had he not answered questions satisfactorily which was propounded to him ^{by} the interrogatories sent, we would have insisted on Mr. Wood going to the expense of

the trip, and while we propounded to him interrogatories before we would agree to examine him by way of interrogatories, I at the time, and have ever since, doubted the ethical propriety of having a witness to first answer your questions as you propose to propound them to them before he is put upon the stand and sworn as a witness. And in this we think that we somewhat violated the ethics of our profession in order that we might save Mr. Wood this large expense.

X.Q.4.-- To how much expense did you go out your own pocket that was not paid back to you in the case of Wood Vs. Collier?

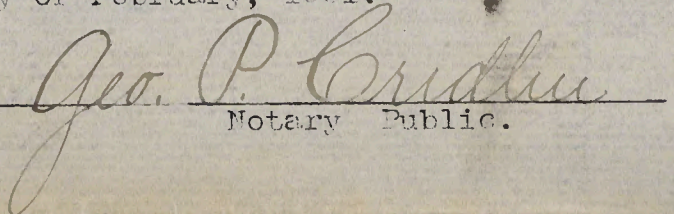
A.-- Not one cent except stationary and stamps, and none was contemplated to be expended by us for Mr. Wood. We were to do the work, he was to pay expenses. We invested our brains and he his capital.

And further this deponent saith not.



Virginia, Lee County, to-wit:

I, Geo. P. Cridlin, a notary public in and for the County of Lee in the State aforesaid, do certify that the foregoing depositions of R. L. Pennington and J. R. Gibson were taken sworn to and subscribed before me at the time, place and for the purpose in the caption mentioned. Given under my hand this the 19th day of February, 1901.



Notary Public.

Pennington Bros.

or: }

H. L. Wood

Depositions of
R. L. Pennington
J. R. Gibson.

Received from Geo P. Cridlin
the notary before whom
taken and filed Feby 19
1901.
A. B. Munsey Clerk

Geo. P. Cridlin N. P.
fee for taking depositions
2 hours - - - \$1.50.

The depositions of L.T.Hyatt and another taken before me, Geo.P. Cridlin, a notary public in and for the County of Lee and State of Virginia, on this the 25th day of February, 1901, by agreement of parties, at the office of R.L.Pennington in the town of Jonesville, to be read as evidence on behalf of the defendant in a certain suit in chancery depending in the Circuit Court for Lee County Virginia in which Pennington Bros. are plaintiff and H.G.Wood defendant.

Present T.H.Gibson attorney for defendant and R.L.Pennington for plaintiffs.

L.T.Hyatt a witness of lawful age being duly sworn deposes as follows:

Q.1.-- Please state your age, residence and occupation.

A.-- I am 31 years old, live in the town of Jonesville, Virginia, and am a lawyer.

Q.2.-- According to the custom of the Lee County Bar, what is the usual division of fees when a corresponding attorney associates a member of said Bar to try a case?

A.-- Between members of the Bar one-half each; between a foreign attorney and a Lee County attorney two-thirds to the home attorney and one-third to the foreign attorney; this is my understanding.

Q.3.-- Upon an examination of the case of Wood against Collier, which I now hand you, what would you consider a reasonable fee for the prosecution of said case, and if there appears to have been any more work done in that case than in the ordinary chancery cases, state what it is?

Obj.-- The foregoing question or any answer thereto is objected to because the plaintiffs in this case are seeking to recover upon a contract for a specific sum, agreed upon between the plaintiffs and the defendant before the work had been done, and it is not a suit for an amount to be paid upon an implied contract. but an express contract; and because it is mere opinion.

R.L.Pennington for plffs.

A.-- I don't see that any more work has been done in this case than in the ordinary chancery case in Lee Circuit Court of like kind in which defence is made. I believe it is customary to charge home clients in addition to legal fees and commissions 5% of the amount collected, foreign clients 10%.

Q.4. ~~How~~ Would \$113.52 pay for the services of prosecuting the case of Wood against Collier?

Obj.-- The foregoing question is objected to because there has been no of \$113.52 paid for attorneys fees in the case in question or any other amount. There was collected on the day of sale as shown by the papers the commissions for the sale of the land which went to the Commissioner, not as attorneys fees, but as a compensation to the Commissioner for the work done by him. There was \$5.00 paid the Commissioner for making deed and there was ~~and~~ paid the taxed attorneys fee of \$15.00 all of which was paid, not by H.G. Wood, but by William Collier out of the price of his land, and \$5.00 of the attorneys fee was kept by T.H. Gibson.

R.L. Pennington. for plff.

A.-- I should think the amount named would be a pretty good fee, as much as a lawyer in this County usually gets out of such a case.

Q.-- What is a customary division between associated attorneys at this Bar in regard to the division of the Commissions of sale, legal attorney's fee and fee allowed for making deed in cases in which they associated together?

Obj.-- The foregoing question is objected to because custom is no law in Virginia and the law of Virginia gives to the man who does the work as commissioner, the pay, and if there is to be any division of the commission of sale it must be by special contract and not by custom; and because the records of this case show by the answer filed therein that T.H. Gibson ~~was~~ ^r a resident of the City of Bristol Tennessee, and the records of the old case that was tried show the suit was brought in the name of Pennington Bros., and the letter of T.H. Gibson, filed in this case shows that Pennington Bros. or R.L. Pennington, was to try the case for him, and the only thing to be divided was as shown by that letter, the 5% commission for the collection.

R.L. Pennington, for plff.

A.-- ~~There is~~ It is customary to divide the legal attorney's fee equally. When both attorneys act as commissioners the commissions of sale are also divided equally. Sometimes, by agreement, only one of the attorneys is named as commissioner and still the Commissions of sale divided equally, but usually when only one attorney is named as commissioner, he takes all

the commissions of sale. I have known cases in which two commissioners acted and divided the commissions of sale in the proportion of debts represented by each.

Cross Examination.

X.Q.1.-- Do you know how much was involved in this suit, I mean how much money?

A.-- I do not know exactly, but my recollection is that it is between \$1000.00 and \$1200.00.

X.Q.2.-- Supposing it to have been \$1200.00 claimed by the plaintiff Wood and supposing that the defendant Collier on the other hand claimed that he had overpaid this debt something \$280.00, under that phase of the case, would you have considered a fee of \$100.00 to the attorneys trying the case to be paid if they won for the plaintiff and \$50.00 if they should lose out, an unreasonable contract fee?

A.-- No.

And further this deponent saith not.

Witness 1 da \$.50

L. T. Hyatt

~~C.T.Duncan another witness of lawful age being duly sworn deposes as follows:~~

~~Q.1.-- What you would consider a reasonable fee for the prosecution of the suit of Wood against Collier?~~

~~Obj.-- The foregoing question is objected to because suit is founded upon a contract for a specific sum and not upon an account for an implied promise to pay what was reasonably worth.~~

~~R.L.Pennington, for plff.~~

~~4--~~

C,T,Duncan, another witness of lawful age being duly sworn deposes as follows:

Q.1.-- Please state your age, residence and occupation?

A. I am sixty years old, my residence is Jonesville Virginia, am an attorney at law.

Q.2.-- Are you acquainted with the chancery cause of Wood against Collier? if so what would you consider a reasonable fee for the prosecution of said case.

A.-- I am pretty well acquainted with the record as contained in the file of papers in said cause. I have examined the record tolerably carefully. This examination was made just prior to the rendition of the decree for sale in said cause. I examined it at the request of D,C,Sewell surviving attorney of Mr.Collier in the cause. I found that there had been several depositions taken in the cause, and there is about the amount of work in it for which I usually charge about \$75.00 to \$100.00, but in such cases as this I usually charge 5% on the amount involved, or collected, the attorneys' fee, and have myself appointed commissioner to make the sale and in such cases I always contract with reference to the fact of commissions on the sale. If I had been defending this case ~~xx~~ ~~xxxxxxxxxxxxxx~~ and considering the defence set up by the answer, I should have charged \$75.00. If I had been prosecuting it I would have regarded 5% on the amount collected together with the Commissions of the sale and the taxed attorneys fee as a reasonable compensation.

Obj.-- The foregoing question and the answer thereto are objected to because the plaintiffs are suing upon a contract for sum certain and not upon an implied promise to pay what the services were reasonably worth.

R.L.Pennington. for plff.

Cross Examination.

X.Q.1.-- Considering the facts that there was about \$1200.00 involved to Wood and that the defendant Collier claimed that he had overpaid his liability about \$280.00, would you have considered a contract for a fee of \$100.00 if the suit was gained and \$50.00 if lost, an unreasonable fee to have been charged for the services that might have been rendered in said case?

A.-- I can only judge of the services that might have been rendered by the services that were actually rendered. As I have stated above, I do not think a fee of \$100.00 unreasonably large for the services rendered in that case and recurring to that answer, I would say that a contract for \$50.00 if the suit was lost or \$100.00 if gained, that being the entire compensation in either event, would not be unreasonable as a fee in the case referred to.

X.Q.2.-- With the case made by the bill and answer in which Collier claimed to have overpaid his liability the sum of about \$280.00, would you have been willing to do the work necessary for the prosecution of that case for the uncertain small commission of 5% when you had in your mind the belief or strong probability of Collier making his answer good by proof?

A.-- If it is meant by that, commissions on the uncertain sum that might in such an event as that supposed, have been collected or ascertained to be due on the liability, I would not, but in answering the first question propounded to me, I was careful to state, and I am always careful to contract, where I contract for commissions, for a commission on the amount involved, not the amount collected. I would have regarded as before stated, 5% on the amount involved, say \$1200.00 together with the taxed attorneys fee and the probability that I would be appointed commissioner and get the Commissions of sale for whatever, if anything, was sold, as reasonably fair compensation for my services. We all have to take some risks in cases either at law or in chancery, but I never take a risk on commission unless I contract for a very high commission, but always base my charge of commissions on the amount my client claims and for which he employs me to prosecute his suit.

And further this deponent said not.

W. T. Sumner

Virginia, Lee County, to-wit:

I, Geo.P.Cridlin, a notary public in and for the County aforesaid in the State of Virginia, do certify that the foregoing depositions of L.T.Hyatt and C.T.Duncan were taken, sworn to and subscribed before me at the time, place and for the purpose in the caption mentioned.

Given under my hand, this the 25th day of February, 1901.

Geo. P. Cridlin
Notary Public.

H. G. Wood

ads { In Chy.

Pennington Bros.

Depositions of

L. T. Hyatt \$.50

C. T. Duncan.

Received from Geo P. Criakin
the Notary before whom
taken, and Filed Feby 26
1904. A. B. Munsey Clerk

Notary Geo P. Criakin
fee for taking these
Depositions. 2 hr. \$1.50

"A"

#12 Sixth St.

Bris. Tennessee.

Feb. 9. 1899.

Dear Bob;

You remember I spoke to you of having a case to mature for march court at Jonesville. But it will be impossible for me to get home in March and there will be only a short time for maturing the case, so I want to associate and let you try the case - dividing fees according to your general rule. The case will give ~~you~~ but little trouble and my fee was to have been 5% for the collection. Now if you will bring the suit it will be an accommodation as I will be unable to get home before July. Father has the bond at store and will give you the same. Mr. Collier gave his bond to ~~Harry~~ St. G. Wood for (\$1185.00) balance on land. Vendors lien is retained. It has been six years ago ^{and} Collier, in order to defeat the claim, says that the title to the land is not good because some widow failed to sign deed long time ago. The widow is dead I understand & Collier will have to pay for land or have it sold, if he can put up no better answer.

Collier has paid some on the bond; but principal
and interest will amount to something over
\$1000.00; so it will be a fair fee after all.

Very truly, your friend

Thos. H. Gibson

Mr. Robt. L. Pennington

Esq. A. Wood -

copy

This Deed, made this 7th day of November 1890, between
Robt L. Peunington

Special Commissioner, as hereinafter set forth, part y of the first part, and H. G.
Wood, of the County of Koy, Territory
State of Oklahoma, part y of the second part:

WHEREAS by a decree of the Circuit Court of the County of Lee
entered on the 11th day of June 1890 in the chancery cause entitled
H. G. Wood Plaintiff vs. William Leclair
Defendant, therein depending,
it was, among other things, adjudged, ordered and decreed that Robt L.
Peunington, who was thereby appointed Special Com-
missioner, for the purpose, shall sell by public auction, after certain advertisement, and upon cer-
tain terms in the said decree fully set forth, certain real estate therein described; and

WHEREAS the said Robt L. Peunington
pursuant to the decree, did on the 20th day of August 1890 after having
duly advertised the same in accordance with the terms of the said decree, offer for sale by public
auction the following described real estate, to-wit: The some land that
was conveyed by H. G. Wood wife to William
Leclair by deed dated the 27th day of June 1890
& on record in the office of the Clerk of the
the County Court for Lee County, containing
according to the said deed 229 acres, and
situated about 8 miles westward of Jonesville.
Reference is here made to the said deed for
the metes & bounds of said land.

At which sale the said H. G. Wood made the last and
highest bid therefor, and became the purchaser thereof at the price of thirteen
Hundred & Four & 92/100 dollars; and

WHEREAS the said sale was duly reported to the Court by the said Special Commissioner, and

Copy

was by another decree, entered in the said cause on the 7th day of September 1890 by the said Court, approved and confirmed; and

WHEREAS the said H. S. Woods hath paid the whole of the said purchase money, which payment was duly reported to the said Court; and whereupon by another decree entered by the said Court in the said cause on the 7th day of Nov 1890 the said Robert L. Pennington was appointed Special Commissioner to execute and deliver to the said H. S. Woods

a good and sufficient deed, with special warranty conveying the said real estate to him in fee simple.

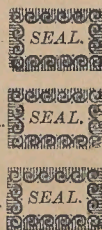
NOW, THEREFORE, THIS DEED WITNESSETH, That for and in consideration of the premises, and in obedience to the said last mentioned decree, the said Robert L. Pennington

Special Commissioner as aforesaid, doth grant unto the said H. S. Woods with special warranty, the real estate hereinbefore fully described.

Witness the following signature and seal :

*Supplied with
\$150 U.S. Int.
Rev. Stamps*

Robert L. Pennington



State of Virginia, County of Lee, to-wit:

I, B. M. Morgan Clerk of the County Court for the County aforesaid, in the State of Virginia, do certify that Robert L. Pennington whose name is signed to the writing hereto annexed, bearing date on the 7th day of Nov, 1890, hath acknowledged the same before me in my County aforesaid. Given under my hand this 7th day of Nov 1890.

B. M. Morgan

In the _____ Court Clerk's Office of the _____ of _____
the _____ day of _____ 1890:

This deed was this day presented to me in my said office, and, with the certificate annexed, admitted to record at _____ o'clock _____ M.

Teste:

Clerk.

Robt L. Peuncyter

Special Commissioner

Copy of
DEED OF

to

BARGAIN AND SALE.

H. G. Nord.

189__.

Presented in office and, with
certificate, admitted to record at
o'clock ____ M.

Clerk.

Recorded Deed-Book

Page

Clerk's Fee, - - - - \$

Tax, - - - -

Office
Circuit Court Lee County,
A. B. Munsey, Clerk.

Jonesville, Va., _____ 1900.

Virginia:

At a circuit court continued and held for Lee County at
the Court-house on Friday Nov 17th. 1899.

On motion of A. L. Pridemore, Thomas H.
Gibson is permitted to practice law at this bar, and there-
upon said Thomas H. Gibson took the oath prescribed
by law.

A copy

Leste A. B. Munsey Clerk

Copy of Order
filed with R. L.
Pumington's deposition
"A"

In the Leisuit Court of the County of Lee

Pennington Bros
against

Plaintiff

IN Chancery

H. B. Woods

Defendant

Robt L. Pennington, maketh oath and saith, that he believes the claim, for which the above entitled suit-~~action~~ is instituted, to be just; that he, the affiant, believes that Pennington Bros. are entitled to and ought to recover in said action \$ 10 00 (at the least), with interest thereon, to be computed at the rate of 6% per centum per annum, from the 7th day of November 1890, till paid; and that to the best of his belief the said defendant :

1. a foreign corporation, or is not a resident of this State, and has no estate or debts owing to said defendant within the County of Lee in which the suit-~~action~~ is or brought ~~sued with a defendant residing therein;~~

2. ~~removing or about to remove out of this State, with intent to change~~ domicile;

3. ~~removing, or intend to remove, or has removed~~

~~own estate, or the proceeds of the sale of~~ property, or a material part of such estate or proceeds, out of this State, so that process of execution on a judgment, when obtained in said action, will be unavailing;

4. ~~converting, or about to convert, or has converted~~ property or some part thereof into money, securities, or evidences of debt, with intent to hinder, delay or defraud creditors;

5. Has ~~assigned or disposed of, or about to assign or dispose of~~ estate, or some part thereof, with intent to hinder, delay, or defraud creditors.

Subscribed and sworn to before me this 14th day of May 1890.

Robt L. Pennington

A. B. Munsey

C.

Permittington Bros

vs.

AFFIDAVIT FOR
ATTACHMENT.

H. G. Wood

Filed the 12 day of January 1901

A. B. Munsey clk

H.G. WOOD

Def't.

ads

In Chy.

Pl'ffs.

PENNINGTON BROTHERS

For demurrer, defendant says that plaintiff's bill is not sufficient in law; because:}

- (1) It shows on its face that a higher and greater fee was attempted to be made for the benefit of the plaintiffs after the relation of attorney and client existed, and asks judgment against defendant for such supposed higher and greater fee.
- (2) It shows on its face that said supposed contract was made for the benefit of the plaintiffs, and at the same time fails to show that said supposed contract was entered into by the defendant freely, with a full understanding as to his rights and to its effect, and that said supposed contract was perfectly fair.
- (3) It no where shows that it was "filed for the purpose of attaching" the estate or property of the defendant.
- (4) It does not show that the land attempted to be attached "will not rent in five years for a sufficient sum to pay the debt and ~~costs~~ costs of the case."

H. G. Wood,

By T. H. Gibson p. d.

H.G.Wood

Def't.

Ads.

Pennington Brothers

Plffs.

For demurrer, defendant says that the plaintiff's bill is not sufficient in ~~law~~ law, because:-

(5) The bill shows on its face that plaintiffs, without withdrawing from the original contract with the client, attempted to arrange a different fee when they were legally bound to do the services for which the larger fee was attempted to be made, and the supposed contract sued on is therefore without consideration and void.

PENNINGTON BROTHERS,

Attorneys at Law,

OFFICES AT PENNINGTON GAP AND JONESVILLE, VA.,

OFFICES CONNECTED BY TELEPHONE.

REFERENCES:

POWELL'S VALLEY BANK, JONESVILLE, VA.
PENNINGTON GAP BANK, PENNINGTON GAP, VA.
R. G. DUN & CO.,
KNOXVILLE AND RICHMOND.

Jonesville, Lee Co., Va., Feby. 10, 1899.

Mr. T. S. Gibson:-

Bristol, Tenn.

Dear Tom:-

Your father handed me the letter which you wrote me on the 9th, and in regard to the collection of the note of Wood vs. Collins will say that we will take the matter and divide the fees according to the rules among attorneys. We will bring suit at once and get it ready for the March term.

I am very much obliged to you for your preference, and shall be glad to return the favor when I can.

Well, how are you getting on in Bristol? I hope you like the place and that you will make a success there. It has been very cold here for a few days, and it is about all that we can do to ~~xxxxxxxxxx~~ stay warm about the fire. Jonesville is very dull now, not very much business going on of any kind owing to the cold.

Hoping that you and your wife are well, and extending you my best wishes, I beg to remain,

Sincerely your friend,

Robt. L. Pennington

11
Dec. 1, 1899.

R.
R.H.C. Wood,

Okla. Home. U.S.A.

Dear Sir:-

In your suit vs. William Childer, he has answered and claims that he has paid the whole of your debt and more, and asks for a judgement against you for the overpayment. That you may know exactly what he has answered, we have made a copy of his answer and herewith enclose the same to you. You will find in his answer that besides the payments endorsed on the back of the \$1185.00 note he claims he has made one payment of \$500.00 one of \$600.00, and one of \$880, and claims another for \$57.00 for cull lumber. In order that you may understand the answer fully and the case, we have made also a copy of the bill we filed for you in the case, and herewith send you.

Perhaps you already understand the terms upon which we brought this suit, but the matter has assumed such an attitude, which we had not looked for, it will be necessary for us to have a different agreement with you as to our fee. As we understand it you intended to give this claim for collection to your nephew, Mr. T.J. Gibson, but owing to the fact that he went away to Bristol and was delayed in getting his license to practice he turned the claim over to our Mr. R.L. Pennington, with whom Mr. Gibson was upon special terms of Friendship, and with the understanding that we were to divide the fees with him according to the rules of attorneys, explaining that he had agreed upon a fee of \$5 % with you, or with his father for you. We understood that the amount of the claim was not disputed, and all we would have to do would be to bring suit and sell the land, under which phase of the case, the amount we should have received would have been an ordinary

the commission which we would have received would have been an ordinary fee. The case however has assumed such an attitude as will necessitate our taking depositions and make a long and hard fight in order to set up and establish the truth of your claim, necessitating much hard labor and considerable expense, you therefore could not expect us to depend upon an uncertain small commission for the work which we will have to do and the expense to which we will have to go, for it will be necessary for us to have the deposition of both yourself and wife, carefully taken, and to do so one of us would have to make a trip to your place, and you know that would be costly, as well as a hard trip. It is always our purpose to drive every case we undertake to prosecute to success, as well to keep our reputation as to please our client, and to do this we of course must have pay for our services and expenses, and as this is a large and important matter to you, of course you can not afford to have the matter neglected. We however are willing to make our fee very reasonable, we are willing to do all we can for you, charging you a fee of \$100.00 if we gain, to be paid out of the amount collected from Collier, or in case we lose, charge you \$50.00, in either case you to pay or expenses on the trip to Oklahoma for the taking of the depositions; you paying Mr. Gibson whatever he may claim for his services.

In replying to this letter we will ask you to state in full the amount and dates of all the payments which Collier has made you upon this land, how it happened the new note was executed, and read over carefully the bill and answer and if there is any thing in the bill that is not in keeping with the facts write us just what it is

and any thing you find incorrectly stated in Collier's answer, point it out in full, Give us an accurate account of the whole transaction, explain the school house matter, whether you had title to the house when you conveyed or, and all you know about it, tell us why the deed was not executed untill after the execution of the \$1185.00 note, and tell us why the new note was executed, -tell us wether that fter the execution of the new note there was ever any payment of \$880.00'tell us wether the note was executed the day it purports to be executed. You need not be afraid of writing a long letter, that is waht we want, if you tell us any thing that does not pertain to the case that will not hurt, but in telling us the full case as you understand it you may tell us something which you may think very immaterial but which we can see is material to the issue in the case before us. We want to make you case a success and to do so fully we want to be fully acquainted with it. We will not have very long to prepare your case in, the next court will come the 1st of March and we will have to be ready, and we will have to hustle to get our side in shape, so do not delay your reply but answer immediately, taking time however to stdy over the matter and get it all in your mind.

Thanking you for past favors, and trusting that we may be able to dr ve your case to success. we beg to remain,

Sincerely your friends,

PENNINGTON BROTHERS,

Attorneys at Law,

OFFICES AT PENNINGTON GAP AND JONESVILLE, VA.,

OFFICES CONNECTED BY TELEPHONE.

REFERENCES:

POWELL'S VALLEY BANK, JONESVILLE, VA.
PENNINGTON GAP BANK, PENNINGTON GAP, VA.
R. G. DUN & CO.,
KNOXVILLE AND RICHMOND.

Jonesville, Lee Co., Va., Dec. 23, 1899.

Mr. H. G. Wood,

Blackwell, Oklahoma.

Dear Sir:-

We are in receipt of your letter of recent date accepting our proposition in regard to the fee to be charged in the case vs Mr. Collier, and giving us an outline of the facts in regard to the land transaction between you and him. We should have written you immediately upon the receipt of your letter, but we wanted to see Mr. M. G. Ely, the Commissioner appointed in the case to know when he would begin the taking of the depositions &c, and we have seen him and he has arranged to begin the taking of the account on the 26th day of December at our office in Jonesville. We will only introduce and prove the execution of the note we have, which was given you, then we will let them take their depositions to show what they can in regard to the alleged mistake, and after they have taken their depositions, copies of which we will keep, we will then let you know what they have proved and we will take steps to prove our side of the case. We would have been glad if you could have come here, and we are sorry that you can not, but we will watch the matter with the closest attention, and if after their depositions are in we can arrange to take your deposition without us making the costly trip, we will of course do so, yet we do not want to leave any thing undone in the successful determination of your case. We think from your statement we will be able to show that Mr. Collier is badly mistaken in the position he has taken. We will write you again in a few days.

"G."

Blackwell Okla.

Dec. 21, 1899

Mr. Pennington

I answered your letter some two weeks. Would like to know whether you have recd. my letter or not.

When Mr. Alexander bought my lumber he said he would take Mr. Colliers at the same price if he would deliver it at my place of sawing.

He would not do that and I took it ^{at} the same price I got for mine. I give Mr. Alex. half the culls for sawing. So you see half the culls was mine. You can find out from Perry Troop something about the ^{amount} culls.

But you understand it was all settled in. My wife is a good calculator as you can prove by John Sadtler or J. H. Gibson. She

says she went school at Bristol after going to Mr. Sadler got perfect grade on arithmetic on examination. I can calculate interest as good as any one. You must let us know whether you get our letter or not.

Yours Respectfully

H. G. Woose

" 27 "

Blackwell Bay Co. O.T.
Feb 27, 1899.

Pennington & Bro

When Mr. Collier
Bought that land he paid some
down and the balance was to
be paid on one two ~~or~~ and three
years time. He failed to pay off
the note as they become due.

After he sold his cedar timber,
he made a payment. Then he
gave his note for the remainder.
This is my recollection about it

H. S. Wood

"E"

Blackwell. Okla.

Dec. 9. / 899

Pennington Bros.

Dear sirs

I will except your proposition in regard to your fee I think it will be the best for you to come to Okla. as I think it will be cheaper. could you form the questions and have an Attourney here to take the depositions but if it is the best for you to come. I want you to come. But it would not be impossible for us to go there.

When you rec'd this
letter I would like
for you to answer
as soon as possible,
if you come write
to me what time
you will be at
Blackwell and I will
meet you there.

I live one mile east
and six north of
Blackwell.

Yours truly
H. G. Wood.

(1)

Mr. Collier never called on us for ^{the} deed. after we sold out and was going to leave we wanted to make it before we left.

We made the new note for convenience as the last note would have been due in a few days and we wanted to get interest on the whole amount.

Collier claims that in Nov. 1892 he paid the six hundred dollars (\$600) and interest in full.

That is not true. He never paid enough for a full payment on any

(2)

of the payments until we settled for cedar lumber, culls and his boys hauling.

He acknowledged the credits as all right and he give us the eleven hundred and eighty five dollars (\$1185) note.

After the lumber and partial payments was counted in he give us this new note.

He was so close up for money he had to borrow it from me to hire hands to cut and saw this cedar lumber in the woods. except what they done themselves.

He thought his lumber ought to have made more

(3)

and we told him he could get any one else to count it after that he told me he had and they made it the same as we did.

This settlement was made and the new note given after the settlement. the same day.

He did not buy that place expecting to pay for it all himself he said that he had an agreement with his sister to pay a part of it and divide the land. he said if she had complied with the contract he would have been all right.

He seemed discouraged

(4)

He seemed discouraged that day about getting it paid after the settlement

He had some money before this to pay on land he said he had thoughts of keeping that money and giving up the land

Mr. Joe Ewing and I had cedar sawed near the same time we were all disappointed I fell short over half of my expectation I bought balliers delivered where it was to be sowed I was to pay \$10.00 per thousand for all 10 ft. and over and

(5)

\$8.00 per thousand for
7 or 8 ft I don't remember
which to 10 ft in length
I hired George Ely to
saw it for me we set-
tled with George for
the same number of ft.
as we did Collier there
was 49000 and some ft.
we allowed something
for the culls.

It was the cedar lumber
payment, he paid no
cash. I was not under
any obligations to take
the culls. I thought
I could get the money
out of them quicker
than he would pay
me. Mr. Perry Roof
got the culls. I was
sorry for him and

(6)

give him a \$100 Oliver
below the same day
of settlement.
Collier claims that in
Jan. 1894 he paid
\$880 he did not pay
it he paid \$20 Jan 30
1894 and that was all
he did pay while we
was there on that
\$1185 note. All he ever
paid before the lum-
ber payment was
in small amounts.
He paid some money
he got from Slemp
at one time and he
sold some mule colts
at another time and
paid that. You can
see from the lumber
payment near what

(7)

the pay merits amounts to. The note was executed the very day of settlement and settlement was made the same as the date of the note. The settlement was not made the last of Jan. 1884. There was no one present but Mr. Collier and my self and family.

In our bill of complaint you have made a mistake you stated on Jan. 30, 1883 that we settled with Collier it should have been Dec. 30, 1883 to correspond with the #1185 note

(8)

Boon Wade had an option on the place, he sold it to Collier. John Hiatt drew the notes and Wade got from \$75 to \$125 for selling the land.

That was taken out of one of the notes consequently making four notes Collier give. Mr. Wade sold the note to Wright Stickly for a share. I bought it from Mr. Stickly to keep him from pushing Collier as I wanted to keep him in as good a shape as possible to pay me and save him from cost.

John Hiatt said that when he drew the notes Collier would never pay for the land. he said there was no shift in Collier.

(9)

I think that Collier tried to sell the land east of the public road to Baz and Dow Smith.

I think he paid the Boon Wade note in about a yr. after he bought the land.

He did get three notes the day he gave the new note \$1185 note.

In Colliers answer he claims credit for cull lumber at price \$60 cts. per hundred \$57.00 there being 85.00. that equals \$51.00 instead of \$57.00.

(10)

That \$203. payment on the \$1185 note was the money he got for the poplar lumber he sold off of the place. I think any one could prove that he didn't have the money and never made it after he bought. to pay the payments he claims. I think the fact is that he was always discouraged after his sister disappointed him.

When he was contracting his lumber he would think he could pay out the lumber never measured out to his expectations.

The School house

The Alexander Ewing and
E. A. Wood land. I sold
hollier was twenty
two hundred dollars
(\$2200)

Something near four
Acres a part of
G. H. Gibson land I
bought of Chas. Kincaid
I sold hollier for fifty
dollars (\$50.) making
two thousand two hun-
dred and fifty dollars
(\$2250) for the three
tracks. I didnt sell
him the school house
land and the furniture
in the house
We had deeded the land

to the district and he knew it before he bought, he sent his children to the public school there. The Ewing was teacher.

George Blankinship wrote the deed and in copying from the other deed he has made a mistake if it is included in the deed.

He expressed himself well pleased getting close to public school. He bought this small track in order to let him out to water as the water runs all along the South side. I remember of Follier being one of the chief disputers contending for a school at that place. He made a trip over

(19)

to see McFlure one of the
Trustees.

Pennington Bros.
vs.

J. H. G. Norris -

Exhibits with
Deposition of
R. R. Pennington

PENNINGTON BROS.
ATTORNEYS-AT-LAW,
PENNINGTON GAP AND JONESVILLE, VA.

In the Clerk's Office of the Circuit Court of the County of
Lee

Pennington Bros
against

Plaintiff

In Chancery

H. G. Wood

Defendant

This day Robt L Pennington personally appeared
before me A. B. Munsey Clerk of the said Court,
and being duly sworn, made oath that H. G. Wood

defendant in the said suit is not a resident of the State of Virginia,

Given under my hand as Clerk of the said Court, this 12th day of January 1901.

A. B. Munsey Clerk

Pennington Bros

vs.

AFFIDAVIT FOR ORDER
OF
PUBLICATION.

H. S. Wood

Pennington Bros p. q.

Filed Jan 12 1901
A. B. Munnick clk

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

H. G. Wood

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the said court, on the *1st* Monday in *February* 1901, to answer a bill in

chancery exhibited against *him* in our said court by *E. M. Pennington*
+ Robt L Pennington, attorneys + partners under the
firm name of of Pennington Bros

And have then there this writ. Witness, A. B. Munsey, Clerk of our said Court, at the court-house,

the *12th* day of *January* 1901, and in the *12th* year of the Common-

wealth.

A copy, Teste:

A. B. Munsey

Clerk.

Clerk.

The proper affidavit having been made and filed the officer to whom this process is directed is ordered to attach the estate of the Defendant H. S. Wood situated in Lee County Virginia and especially the following real estate to-wit: a tract of land formerly conveyed by H. S. Wood and his wife to William Collier and which was recently sold from William Collier in the Chancery Cause of H. S. Wood against said Collier and purchased at said sale by said Wood. Given under my hand this the 12th day of January 1901.

H. C. Munsey Clerk

Pennington Bros
VS.
SUBPENA
IN CHANCERY.

H. S. Wood

Pennington Bros. P. 9.

To 1st Feby Rules.
.. Circuit Court.

Legal service of this
subpœna is accepted
on behalf of the defendant
H. S. Wood by Jan. 15th 1901
Thos. H. Gibson Atty.

Deceased on the 14 day of Jan. 1901, by the order of attachment
subpœna for the within Pennington Bros. by paying on a notice
last of land situated in Lee Co. being the same land
between Mrs. Collier recently living & the same land
bought by H. S. Wood in the Chancery Cause of H. S.
Wood vs. Wm. Collier at the sale made by H. C. Munsey
Clerk. & said land is situated in the County of Lee
County. Not further excused, faith, no one
dare & is present & defendant not in face.

W. H. McLean Atty.

Plffs Costs
 Clerk 5.51
 Tax 1.50
 Shff 1.00
 atty 15.00
 N.P. 3.00
 \$26.01

Defts Costs
 Clerk 1.10
 NP 375-
 \$485

Beemington Mo.

vs. In Chancery
 H.G. Woods.

1901 1st February rules Bill
 filed Spa & rented attach-
 ment levied and D.C.
 " 2nd Feby rules app filed
 & Cause set for hearing

108.00
 26.01
 \$134.01

Debt
 Interest
 Costs

108-26-134